

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TAMMY HOLLOWAY,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 2:09-CV-760-WKW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On August 11, 2009, Petitioner Tammy Holloway filed a petition (Doc. # 1) pursuant to 28 U.S.C. § 2255 seeking to vacate, set aside, or correct the sentence she received on October 29, 2008, in criminal case number 2:08-CR-62-WKW. The basis for Ms. Holloway's petition is the recent decision of the Supreme Court in *Flores-Figueroa v. United States*, 129 S. Ct. 1886, 1888 (2009), which interpreted the aggravated identify theft statute, 18 U.S.C. § 1028A, in a manner contrary to the interpretation of the Eleventh Circuit at the time of Ms. Holloway's sentencing. Ms. Holloway argues, and the Government conceded (Doc. # 6), that her conduct would not have made her liable under that statute were she being prosecuted today. The Government filed this concession in response to the order (Doc. # 3) of the Magistrate Judge; the Magistrate Judge then filed a Recommendation (Doc. # 7) that Ms. Holloway's petition be granted and she be resentenced. The court was unclear as to the basis for the Government's concession, and so ordered (Doc. # 8) a fuller explanation, which the Government provided. (Doc. 9.)

Upon consideration of the foregoing, it is ORDERED that:

- (1) The Recommendation of the Magistrate Judge (Doc. 7) is ADOPTED;
- (2) Ms. Holloway's Section 2255 motion is GRANTED;
- (3) The Judgment in a Criminal Case filed in case 2:08-CR-62-WKW (Doc. # 26 in that case) is VACATED;
- (4) This matter is SET for resentencing on **October 29, 2009, at 11:00 a.m.**, and;
- (5) Mr. Timothy Charles Halstrom, Esq., is APPOINTED under the provisions of the Criminal Justice Act to represent Ms. Holloway at her resentencing.

DONE this 22nd day of October, 2009.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE